

Message Text

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ORIGIN ERDA-07

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SUBJECT: ERDA/CEA DRAFT GENERAL NUCLEAR COOPERATION AGREEMENT

REF: PARIS 00835

1. THIS IS INTERIM REPLY TO REFTEL AND DEALS WITH PATENT ASPECTS OF SUBJECT DRAFT AGREEMENT. GUIDANCE ON OTHER ISSUES RAISED IN REFTEL CURRENTLY BEING STAFFED.

2. PARA 1 OF REFTEL REPORTS CEA BELIEVE THAT ARTICLE 8 (PATENTS) HAD BEEN INCLUDED IN DECEMBER 5 DRAFT GENERAL AGREEMENT BY MISTAKE. FURTHER, PARA 6 OF REFTEL NOTES THAT ISSUE OF ANY INVENTION QUOTE MADE OR CONCEIVED UNQUOTE IS BACK TO WHERE IT WAS SEVERAL DRAFTS AGO.

3. RECORDS AVAILABLE TO ERDA INDICATE THAT COMPLETE AGREEMENT ON PATENT LANGUAGE WAS NEVER REACHED DURING ERDA/CEA DISCUSSIONS ON UNCLASSIFIED

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NOVEMBER 14, 1975 AND NOVEMBER 20, 1975.

4. IT SHOULD BE KEPT IN MIND THAT FORMULATION QUOTE MADE OR CONCEIVED UNQUOTE IS TAKEN FROM OUR STATUTE AND CANNOT BE MODIFIED AS SUGGESTED BY CEA. THIS LEGISLATIVE REQUIREMENT WAS MENTIONED TO MR. LENIGER DURING HIS VISIT TO WASHINGTON ON NOVEMBER 14. BRIEFLY, THE WORD QUOTE MADE UNQUOTE IS DEFINED, UNDER U.S. LAWS APPLICABLE TO ERDA AS MEANING CONCEIVED OR FIRST ACTUALLY REDUCED TO PRACTICE. BOTH ERDA'S NUCLEAR AND NON-NUCLEAR ACTS COVER INVENTIONS QUOTE MAD OR CONCEIVED IN THE COURSE OF OR UNDER UNQUOTE ANY CONTRACT, AGREEMENT, OR OTHER ARRANGEMENTS OF ERDA. A MORE EXHAUSTIVE EXPLANATION OF OUR POSITION CAN BE FOUND IN LETTER OF JANUARY 19, 1976, FROM ERDA'S ASSISTANT GENERAL COUNSEL FOR PATENTS TO MR. J. RENOU OF CEA, SUBJECT: U.S. PATENT APPLICATION, S.N. 343,769-FILED MARCH 22, 1973, CORRESPONDING TO FRENCH APPL. 72 10599- FILED MARCH 27, 1972.

5. PARA 1 OF REFTTEL ALSO REPORTS CEA PERCEPTION THAT ROBERTS' DECEMBER 5 LETTER IMPLIED DRAFT ARTICLE 8 REFLECTED CEA VIEWS WITH EXCEPTION OF QUOTE GEOGRAPHIC AREA UNQUOTE ITEM. WE DO NOT FOLLOW LOGIC OF CEA INTERPRETATION OF ROBERTS' MEANING. ALTHOUGH HIS LETTER SINGLED OUT CEA'S QUOTE GEOGRAPHICAL AREA UNQUOTE LANGUAGE AS QUOTE NOT ACCEPTABLE TO ERDA UNQUOTE, THIS ALONE SHOULD NOT HAVE BEEN TAKEN TO IMPLY AN ABSENCE OF OTHER CHANGES, FOR ROBERTS WENT ON TO PROPOSE A MODIFIED ARTICLE 8 WHICH SPECIFICALLY INCLUDED A NUMBER OF OTHER CHANGES.

6. PARA 5 OF REFTTEL STATES THAT CEA MAY ACCEPT THE SITUATION WHERE THE QUOTE GEOGRAPHIC AREA UNQUOTE IS LIMITED TO FRANCE (AND TO THE U.S.) IF IN FOREIGN COUNTRIES THE PARTY'S SUB-CONTRACTOR WERE REQUIRED TO PAY THE SAME ROYALTIES FOR THE USE OF THE SAME PATENTS. ON THIS POINT, SEVERAL APPROACHES HAVE BEEN USED IN THE PAST TO ALLEVIATE THE DIFFICULTIES OF JOINT LICENSING CAPABILITY. EMBASSY IS REQUESTED TO SOUND OUT CEA ON THE FOLLOWING CLAUSE, WHICH WOULD BE ADDED TO PARA 3, ARTICLE 8 OF THE ERDA DRAFT GENERAL AGREEMENT OF DECEMBER 5.

QUOTE IT IS UNDERSTOOD THAT THE LICENSING POLICIES AND PRACTICES OF EACH PARTY CAN BE AFFECTED BECAUSE OF THE RIGHTS OF BOTH PARTIES TO GRANT LICENSES WITHIN A SINGLE JURISDICTION. ACCORDINGLY, EITHER PARTY MAY REQUEST, IN REGARD TO A SINGLE INVENTION OR UNCLASSIFIED

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A CLASS OF INVENTIONS, THAT THE PARTIES CONSULT IN AN EFFORT TO LESSEN OR ELIMINATE ANY DETRIMENTAL EFFECT THAT THE PARALLEL LICENSING AUTHORITY MAY HAVE ON THE POLICIES AND PRACTICES OF THE OTHER PARTY UNQUOTE.

7. THE ABOVE QUOTED LANGUAGE IS MORE GENERAL IN NATURE THAN THAT SUGGESTED BY CEA, BUT IT IS BELIEVED THAT MUTUALLY AGREEABLE LANGUAGE CAN BE DEVELOPED. ALTERNATIVE APPROACHES WHICH HAVE

BEEN USED IN THE PAST INCLUDE THE LIMITING OF THE SUBLICENSE TO CERTAIN FIELDS OF USE (AS USE IN THE FIELD OF NUCLEAR ENERGY), OR LIMITING SUBLICENSES ONLY TO NATIONALS OF EACH PARTY'S COUNTRY. HOWEVER, IT IS CONSIDERED THAT NEITHER ERDA NOR CEA WOULD BENEFIT IF EITHER PARTY COULD DICTATE THE LICENSING PRACTICES OF THE OTHER.

8. GUIDANCE ON ARTICLE 6 (PRIVILEGED INFORMATION) OF DECEMBER 5 DRAFT GENERAL AGREEMENT WILL BE FORTHCOMING AS SOON AS AGREED IN WASHINGTON. INGERSOLL

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